

**United States Department of Labor
Employees' Compensation Appeals Board**

C.L., Appellant)

and)

U.S. POSTAL SERVICE, PROCESSING &)
DISTRIBUTION CENTER, Oakland, CA,)
Employer)

**Docket No. 11-1375
Issued: December 22, 2011**

Appearances:
Robert Jeffrey, for the appellant
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:

RICHARD J. DASCHBACH, Chief Judge
MICHAEL E. GROOM, Alternate Judge
JAMES A. HAYNES, Alternate Judge

JURISDICTION

On May 17, 2011 appellant, through her representative, filed a timely appeal of the April 28, 2011 merit decision of the Office of Workers' Compensation Programs (OWCP) terminating her compensation benefits. Pursuant to the Federal Employees' Compensation Act¹ (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

ISSUE

The issue is whether OWCP properly terminated appellant's wage-loss compensation and medical benefits effective October 8, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related injuries.

On appeal, appellant's representative, contends that the medical evidence of record establishes that appellant has residuals and disability causally related to her accepted conditions.

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

OWCP accepted that on October 3, 1999 appellant, then a 34-year-old mail processing clerk, sustained a right wrist strain and right lateral epicondylitis as a result of weighing mail in a claim filed under File No. xxxxxx345. In a subsequent claim assigned File No. xxxxxx792, OWCP administratively accepted that on May 12, 2008 she sustained cervical, lumbar and trapezius strains when a coworker pushed equipment into her.

Following her return to limited-duty work effective July 29, 2009 as a modified mail processing clerk, appellant filed a recurrence of disability claim (Form CA-2a) beginning December 7, 2009 due to the withdrawal of her limited-duty assignment pursuant to the National Reassessment Process.

On February 8, 2010 OWCP referred appellant, together with a statement of accepted facts and the medical record, to Dr. Phillip Z. Wirganowicz, a Board-certified orthopedic surgeon, for a second opinion to determine the extent of her continuing employment-related residuals and disability. In a February 20, 2010 medical report, Dr. Wirganowicz found that she no longer had any objective residuals of her employment-related conditions despite her subjective complaints of continuing neck, lower back, and right shoulder and hand pain. He advised that appellant could perform her regular work duties with no restrictions. In an addendum report dated April 17, 2010, Dr. Wirganowicz clarified his opinion as requested by OWCP. He determined that other than appellant's pain to palpation about her lower back area and tenderness to palpation over the epicondyle of her elbow, there were no objective findings to suggest that she had any continuing residuals of her accepted conditions.

In reports dated March 3 and 10, 2010, Dr. Michael E. Hebrard, an attending Board-certified physiatrist, found that appellant continued to have residuals and disability due to her May 12, 2008 accepted conditions.

On April 26, 2010 OWCP determined that there was a conflict in medical opinion between Dr. Wirganowicz and Dr. Hebrard as to whether appellant had any continuing residuals or disability due to her accepted employment injuries under File Nos. xxxxxx345 and xxxxxx792. On April 30, 2010 it referred appellant, together with a statement of accepted facts and the medical record, to Dr. Terence J. McDonnell, a Board-certified orthopedic surgeon, for an impartial medical examination.

In a June 9, 2010 report, Dr. McDonnell obtained a history of the accepted employment-related right wrist, cervical, lumbar and shoulder injuries and reviewed appellant's medical treatment. He also reviewed the medical record. Dr. McDonnell noted appellant's complaints of pain in her right wrist, the posterior aspect of her right hand in the interval between the fourth and fifth metacarpal bones just proximal to their metacarpal heads, the dorsal aspect of the right forearm to an area about two finger breadths below the lateral epicondyle, left trapezius area and low back. He reported essentially normal findings on physical and neurological examination of the spine with the exception of some tenderness on fingertip percussion about two finger breadths over the paraspinal muscles at the panty line on the left and her complaints of tightening of the paraspinal muscles on the left side of the back and low back pain with flexion of the left hip when passively flexed between 80 and 90 degrees. On inspection and physical and

neurological examination of the cervical spine, Dr. McDonnell reported essentially normal findings with the exception of appellant's complaints of mild pain with fingertip percussion over the middle third of the left trapezius and on fingertip percussion along the vertebral border of the scapula on the left. He found normal findings on inspection and physical and neurological examination of the upper extremities with the exception of pain in the distal intermetacarpal areas between the fourth and fifth metacarpals on the right hand. Dr. McDonnell, however, advised that examination of the distal intermetacarpal areas did not elicit a painful response. Appellant was able to dorsiflex the right wrist against resistance with no difficulty which indicated that no epicondylitis persisted.

Dr. McDonnell diagnosed cervical, lumbar and trapezius strains, right lateral epicondylitis and right wrist strain. He advised that these employment-related conditions had resolved as there was no objective evidence found on examination to support continuing residuals. Dr. McDonnell advised that appellant no longer required physical therapy. He stated that she had some significant psychological/psychiatric complaints that triggered her somatic complaints. Dr. McDonnell concluded that appellant could perform her regular work duties with no restrictions.

Unsigned reports dated August 4, 2010 which contained the typed name of Dr. Daniel P. Saurborn, a Board-certified radiologist, provided magnetic resonance imaging (MRI) scan results of appellant's right and left shoulders. Appellant had mild degenerative changes in lesser tubercle, supraspinatus and infraspinatus tendinosis, a superior labral tear and mild acromioclavicular (AC) joint arthritis of the right shoulder. Regarding the left shoulder, she also had supraspinatus tendinosis, Type 2 acromion with lateral down slopping and mild AC and glenohumeral joint arthrosis. There was no evidence of a full thickness tear in either the right or left shoulder.

In an August 9, 2010 report, Dr. Hebrard advised that appellant had bilateral shoulder impingement tendinitis, superior labral tear on the right shoulder and bilateral AC joint arthrosis based on his review of MRI scan test results and his physical examination findings. In an August 18, 2010 report, he stated that she had right lateral epicondylitis and a right wrist sprain causally related to her repetitive work duties. Dr. Hebrard advised that appellant could work with restrictions.

On August 13, 2010 appellant filed a Form CA-2a for disability commencing December 7, 2009. On August 16, 2010 she filed claims for wage-loss compensation (Form CA-7) for the period August 11 to 27, 2010.

By letter dated August 27, 2010, OWCP acknowledged that appellant had filed a Form CA-2a for disability commencing December 7, 2009 under File No. xxxxxx792. It advised her that there was no evidence establishing her claimed recurrence of disability under File No. xxxxxx345 which appeared to be a duplicate claim. OWCP indicated that appellant's

compensation was terminated under File No. xxxxxx792 as of August 10, 2010 and that she had requested an oral hearing which would be addressed by its hearing representative.² It also advised it was unclear why she was claiming wage-loss compensation under File No. xxxxxx345 commencing August 11, 2010.

On August 31, 2010 OWCP issued a notice of proposed termination of appellant's wage-loss compensation and medical benefits based on Dr. McDonnell's June 9, 2010 medical opinion.

By letter dated September 21, 2010, appellant disagreed with the proposed action. She contended that she was referred to Dr. McDonnell only for an evaluation related to her claim under File No. xxxxxx792 and not the instant claim under File No. xxxxxx345. Appellant argued that any remarks made by him regarding the latter claim violated her rights. OWCP was not allowed to act on a "rider" claim.

A September 22, 2010 report which contained the typed name of Dr. Joel A. Weddington, an orthopedic surgeon, stated that appellant had chronic right lateral epicondylitis, a right hand sprain and ulnar neuropathy.

In an October 8, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date. It found that Dr. McDonnell's opinion represented the weight of the medical evidence in establishing that she no longer had any residuals or disability causally related to her accepted employment injuries. OWCP noted that he reviewed a statement of accepted facts that contained the accepted conditions in both of appellant's claims. Dr. McDonnell also provided a comprehensive review of the medical evidence in both claims.

On October 12, 2010 appellant requested an oral hearing before OWCP's hearing representative.

In an April 28, 2011 decision, OWCP's hearing representative affirmed the October 8, 2010 decision, terminating appellant's compensation. He found that Dr. McDonnell's opinion constituted the weight of the medical evidence in establishing that appellant no longer had any residuals or disability causally related to her accepted injuries.

LEGAL PRECEDENT

Once OWCP accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, OWCP may not terminate compensation without establishing that the disability had ceased or that it was no longer related to the employment.³ OWCP's burden of proof

² In an August 10, 2010 decision, OWCP terminated appellant's wage-loss compensation and medical benefits effective that date on the grounds that Dr. McDonnell's June 9, 2010 opinion was entitled to the weight of the medical evidence in establishing that she no longer had any residuals of her May 12, 2008 employment injuries in OWCP File No. xxxxxx792. In a February 10, 2011 decision, its hearing representative affirmed the August 10, 2010 termination decision, finding that the weight of the evidence was represented by Dr. McDonnell's impartial medical opinion.

³ *Jason C. Armstrong*, 40 ECAB 907 (1989).

includes the necessity of furnishing rationalized medical opinion evidence based on a proper factual and medical background.⁴ Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability. To terminate authorization for medical treatment, OWCP must establish that a claimant no longer has residuals of an employment-related condition that requires further medical treatment.⁵

Section 8123(a) of FECA provides that, if there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination.⁶ When there exists opposing medical reports of virtually equal weight and rationale and the case is referred to an impartial medical specialist for the purpose of resolving the conflict, the opinion of such specialist, if sufficiently well rationalized and based upon a proper factual background, must be given special weight.⁷

ANALYSIS

The Board finds that OWCP met its burden of proof to terminate appellant's wage-loss compensation benefits and medical benefits as of October 8, 2010. OWCP accepted that appellant sustained employment-related right wrist strain and right lateral epicondylitis under File No. xxxxxx345. The Board notes that a conflict arose in the medical opinion evidence between Dr. Wirganowicz, a second opinion physician and Dr. Hebrard, an attending physician, regarding whether appellant continued to have any residuals and disability due to her accepted conditions. The Board finds that OWCP properly referred appellant to Dr. McDonnell for an impartial medical examination pursuant to section 8123(a) of FECA.⁸

In a June 9, 2010 report, Dr. McDonnell found that there were no objective findings to support that appellant had continuing residuals of the employment-related right wrist strain, right lateral epicondylitis and, thus, they had resolved. He provided an extensive review of her medical history and reported essentially normal findings on examination with the exception of tenderness and pain in the lumbar and cervical spine and upper extremities. Dr. McDonnell attributed appellant's significant psychological/psychiatric complaints to her somatic complaints. He concluded that she could perform her regular work duties with no restrictions and that she no longer required medical treatment.

The Board finds that Dr. McDonnell's opinion is sufficient to establish that the accepted right wrist strain and right lateral epicondylitis resolved without residuals and that appellant no longer had any employment-related disability. Dr. McDonnell based his opinion on a statement of accepted facts and the complete medical record. He provided extensive medical rationale

⁴ See *Del K. Rykert*, 40 ECAB 284, 295-96 (1988).

⁵ *Mary A. Lowe*, 52 ECAB 223 (2001); *Wiley Richey*, 49 ECAB 166 (1997).

⁶ 5 U.S.C. § 8123(a).

⁷ See *Darlene R. Kennedy*, 57 ECAB 414 (2006); *Gloria J. Godfrey*, 52 ECAB 486 (2001).

⁸ *Bryan O. Crane*, 56 ECAB 713 (2005); *J.J.*, Docket No. 09-27 (issued February 10, 2009).

explaining that there were no objective findings of residuals of the accepted conditions. The Board finds that Dr. McDonnell's opinion is well rationalized and based on a complete, accurate factual and medical history. OWCP properly accorded his opinion special weight in terminating appellant's compensation benefits.⁹ Its termination of appellant's medical and wage-loss compensation benefits was proper under the facts and the circumstances of this case.

Dr. Hebrard's August 9 and 18, 2010 reports did not address whether the diagnosed bilateral shoulder and right wrist conditions were causally related to the accepted employment injuries. Additionally, he was on one side of the conflict that Dr. McDonnell resolved and these reports are insufficient to overcome that of Dr. McDonnell or to create a new medical conflict.¹⁰

The reports which contained the typed names of Dr. Saurborn and Dr. Weddington have no probative value in establishing that appellant has any continuing employment-related residuals or disability. The presence of these names leave it unclear whether a physician under FECA prepared the reports. It is well established that medical evidence lacking proper identification is of no probative medical value.¹¹

There is no other medical evidence contemporaneous with the termination of appellant's benefits which supports that she has any continuing residuals or disability from her employment-related conditions. OWCP, therefore, met its burden of proof to terminate compensation.

The Board further finds that appellant's contention on appeal, that she continues to suffer from residuals and total disability due to her accepted employment injuries has not been established. As stated, the special weight of the medical evidence establishes that she has no continuing employment-related residuals or disability and, thus, OWCP properly terminated her compensation benefits.

Appellant may submit new evidence or argument with a written request for reconsideration to OWCP within one year of this merit decision, pursuant to 5 U.S.C. § 8128(a) and 20 C.F.R. §§ 10.605 through 10.607.

CONCLUSION

The Board finds that OWCP properly terminated appellant's compensation effective October 8, 2010 on the grounds that she no longer had any residuals or disability causally related to her accepted employment-related cervical strain.

⁹ *Supra* note 7.

¹⁰ See *Michael Hughes*, 52 ECAB 387 (2001); *Howard Y. Miyashiro*, 43 ECAB 1101, 1115 (1992); *Dorothy Sidwell*, 41 ECAB 857 (1990). The Board notes that Dr. McDonnell's reports did not contain new rationale on causal relationship upon which a new conflict might be based.

¹¹ *Thomas L. Agee*, 56 ECAB 465 (2005); *Richard F. Williams*, 55 ECAB 343 (2004); *Merton J. Sills*, 39 ECAB 572 (1988).

ORDER

IT IS HEREBY ORDERED THAT the April 28, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: December 22, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board